

Giant Eagle Markets Company and United Food and Commercial Workers International Union, Local Union 23, AFL-CIO-CLC, Petitioner.
Case 6-UC-314

August 11, 1992

DECISION ON REVIEW AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On November 26, 1991, the Regional Director for Region 6 issued a Decision, Order and Clarification of Bargaining Unit in the above-entitled proceeding, pertinent portions of which are appended hereto, in which he refused to clarify the currently recognized bargaining unit to include the classifications of photo department sales clerks, telephone operators, and day care center employees.¹

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Petitioner Union filed a timely request for review of the Regional Director's decision disputing his determination that the classification of day care center employees is not an accretion to the recognized unit. On May 8, 1992, the Board granted the Petitioner Union's request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully reviewed the record with respect to the issue under review, we affirm the finding of the Regional Director that the day care center employees are not an accretion to the unit. It is the policy of the Board to find accretions "only when the additional employees have little or no separate group identity . . . and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted [footnotes omitted]." *Safeway Stores*, 256 NLRB 918 (1981). On the record before us as described in the appended portion of the Regional Director's decision, we are satisfied that the day care center employees do not share a sufficient community of interest to meet the Board's policy for accretion.

¹ The Petitioner Union is currently the recognized bargaining representative of a unit of:

All employees of the Grocery, Bakery and Produce departments in the Employer's retail grocery stores, excluding assistant manager, third persons, heads of night crew, produce managers, bakery managers, floral managers and photo lab managers.

APPENDIX

DAY CARE CENTER EMPLOYEES

The record reveals that prior to March 1991, the Employer employed no day care personnel. In March 1991 shortly be-

fore the expiration of the 1988-1991 collective-bargaining agreement, a child care facility opened at the New Kensington, Pennsylvania, store. To date that store remains the only one with such a facility.

The record reveals that the day care center was established as a free babysitting service for customers while they are shopping in the store. Customers may leave young children in an attended area while they shop. The day care center is an area approximately 20 feet by 20 feet, located in the front end of the store in an area which was intended to be a group of shops. It is separated from the selling floor by a glass wall in the front, and has its own door.

Day care center employees must have State of Pennsylvania Act 88 clearance,⁷ CPR child training, Red Cross training and some experience or education in child care. Their day to day responsibilities include filling out a registration form when the child is admitted to the area, attending to the child while he or she is in the center, insuring that the same parent who initially brought the child to the center is the one to pick up the child and completing logs registering the times a child is in the center.

Child care workers wear "Giant Eagle" name tags, do not wear uniforms, and receive wages between \$4.50 per hour and \$6.00 per hour. Their shifts are 9:00 a.m. to 5:30 p.m. and 12:30 p.m. to 9:00 p.m. They use the same break room as do unit employees. Child care workers have the option of a 401(k) savings plan, and have different health care and pension benefits from the unit employees. They have no rights for the purpose of bumping into unit positions, nor may unit people "bump" into day care positions.

The day care center is staffed by Manager Lori Meixelsberger⁸ who reports to the store manager and three other employees, Pat Potocnak, Melissa Remper and Kimberly Sadowski. Meixelsberger's responsibilities include scheduling the other employees, granting time off and directing the employees in the course of their jobs in addition to herself directly engaging in child care responsibilities. While she may have input into hiring decisions, the situation has not yet occurred. She does not attend supervisory meetings, nor does she have the authority to grant raises. While it appears that Meixelsberger has the authority to remove employees from a particular daily schedule for gross rules infractions, it does not appear that she has the authority to fire or otherwise discipline the employees. In this regard she would report the situation to the store manager. Meixelsberger is hourly paid as are the other employees, and receives no overtime.

The record reveals that on several occasions just after the day care center opened, employees of the center worked as baggers during busy times in the store. Similarly, on two or three occasions cash office employees, including unit employees, filled in for day care employees who were taking breaks. The record reveals, however, that since at least June 1991, photo lab managers or other store managers have assumed the fill-in responsibilities for day care employees on breaks, and no day care employees have performed bagging or other unit work.

⁷ Act 88 clearance certifies that an individual has not previously been arrested for child molesting.

⁸ Meixelsberger was, at the time of the hearing, on maternity leave and her position was being filled by Kimberly Sadowski.

Based upon the above, and the record as whole, and noting particularly that the day care employees have little or no work contact or interchange with unit employees, perform completely dissimilar job functions, require specialized licensing and educational prerequisites for hiring and enjoy separate health insurance, savings and pension benefits, I find that the day care employees do not enjoy a sufficient community of interest with the unit employees to be included in the unit described herein. Accordingly, I shall clarify the

existing bargaining unit by excluding therefrom the day care employees.⁹

⁹I note that the Union made no specific attempt during the 1991 contract negotiations to include the day care center employees in the unit. However, in view of my determination herein, I deem it unnecessary to pass on the Employer's contention that the unit clarification proceeding was improperly invoked by the Petitioner to include the day care center employees in the unit.